



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

EXHIBIT 5
DATE 4-1-09
SB 465

| | |
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| Bill # | SB0465 |
|--------|--------|

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| Title: | Clarify ownership of streambeds concerning property taxation |
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| Primary Sponsor: | Hamlett, Bradley |
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| Status: | As Introduced |
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- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

| | <u>FY 2010 Difference</u> | <u>FY 2011 Difference</u> | <u>FY 2012 Difference</u> | <u>FY 2013 Difference</u> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Expenditures: | | | | |
| General Fund | \$6,984 | \$0 | \$0 | \$0 |
| Revenue: | | | | |
| General Fund | \$93,838 | \$46,919 | \$46,919 | \$46,919 |
| State Special Revenue | \$5,894 | \$2,947 | \$2,947 | \$2,947 |
| Net Impact-General Fund Balance: | <u>\$86,854</u> | <u>\$46,919</u> | <u>\$46,919</u> | <u>\$46,919</u> |

Description of fiscal impact:

The estimated revenue impact from provisions of this bill is an increase to general fund property tax revenue of \$93,800 and an increase in state special revenue for the university system of \$5,994 in FY 2010. In subsequent years general fund revenue will increase by \$46,919 and state special revenue for the university system by \$2,947. The DOR will incur \$6,984 in costs in FY 2010 to collect taxes based on revised assessments. There are a number of technical concerns with the bill, some with potential fiscal impact. There is a fiscal impact to local governments.

FISCAL ANALYSIS

Assumptions:

1. This bill revises the laws related to treatment of property consisting of the bed of navigable rivers and streams; provides for a reduction from grazing land before a reduction from irrigated land or non-irrigated land for property tax purposes; provides that in a dispute over the ownership of the bed of a river or stream a presumption may not be made based on the tax status of the property; clarifies ownership of structures; and clarifies the ability to control noxious weeds.

2. In 2008, DOR reduced taxable acreage due to the navigable stream or river issue described in Section 1 of the bill. DOR reduced taxable values based on the land use with the highest value (tax) for the parcel. By statute all lands must be classified according to their use or uses and graded within each class according to soil and productive capacity (15-7-103, MCA). In total, this methodology reduced property tax bills for affected property owners by \$225,006 in FY 2008.
3. Under the provisions of this bill the reduction in property tax bills in FY 2008 for affected property owners would have totaled \$1,664.
4. Therefore, the net increase for property owners will be \$233,343 under provisions of this bill in FY 2010 and future years.
5. The Biennial Report, July 1, 2006 to June 30, 2008, DOR, p. 126-127 shows average mills for TY 2008 by taxing entity. Statewide assessed mills were 101.52, approximately 21.4% of average rural mills (475.05 mills).
6. Therefore, of the \$233,343 net increase, approximately 21.4%, or \$49,866, would be allocated to the state.
7. State general fund receives revenue from 95 mills and 0.52 mills for the colleges of technology and the balance is state special revenue funds for the university system (6 mills).
8. Therefore, of the \$49,866 of state revenue, 93.6% or \$46,664 is general fund revenue ($95/101.52 = 93.6\%$ and $\$49,866 \times 93.6\% = \$46,664$) plus an additional 0.5% or \$255 in revenue for colleges of technology which is deposited in the general fund ($0.52/101.52 = 0.5\%$ and $\$49,866 \times 0.5\% = \255). Total revenue for the general fund is \$46,919 ($\$46,665 + \255).
9. Of the \$49,866 in state revenue, 5.9% or \$2,947 is state special revenue for the university system ($6/101.52 = 5.9\%$ and $\$49,866 \times 5.9\% = \$2,947$).
10. This bill is retroactive and applies to tax years beginning with 2008. This fiscal note assumes that if this bill is passed as written, in order to comply with the law, the Department of Revenue will need to bill those taxpayers whose property tax bill was reduced in FY 2008 due to the subtraction of stream bed acreage. For purposes of this fiscal note it is assumed that all of the additional tax owed due to the retroactive change in methodology will be collected. These additional taxes are assumed to be collected in FY 2010.
11. This fiscal note assumes that there is no growth in these additional revenues for future years.
12. DOR estimates that the cost of issuing revised assessments is \$6,984 for printing and mailing.
13. For purposes of this fiscal note, it is assumed that the structures referenced in the bill are exempt from taxation. Based upon this assumption, there are no significant administrative costs due to provisions relating to structures in this bill. If this assumption is not correct, then there will be significant administrative costs as a result of the work required to value the structures and identify ownership. These costs are not known because under current law these structures are exempt and DOR does not track them.
14. This bill is effective on passage and approval and applies retroactively to tax years beginning with 2008.

| | <u>FY 2010 Difference</u> | <u>FY 2011 Difference</u> | <u>FY 2012 Difference</u> | <u>FY 2013 Difference</u> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| <u>Fiscal Impact:</u> | | | | |
| Department of Revenue | | | | |
| <u>Expenditures:</u> | | | | |
| Operating Expenses | \$6,984 | \$0 | \$0 | \$0 |
| <u>Funding of Expenditures:</u> | | | | |
| General Fund (01) | \$6,984 | \$0 | \$0 | \$0 |
| <u>Revenues:</u> | | | | |
| General Fund (01) | \$93,838 | \$46,919 | \$46,919 | \$46,919 |
| SSR (02)-University System | \$5,894 | \$2,947 | \$2,947 | \$2,947 |
| TOTAL Revenues | \$99,732 | \$49,866 | \$49,866 | \$49,866 |
| <u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u> | | | | |
| General Fund (01) | \$86,854 | \$46,919 | \$46,919 | \$46,919 |
| State Special Revenue (02) | \$5,894 | \$2,947 | \$2,947 | \$2,947 |

Effect on County or Other Local Revenues or Expenditures:

- The table below shows the estimated increases to revenue to the counties and other local entities due to provisions of this bill. The table assumes that the counties bill for additional TY 2008 taxes and collect the additional revenues from the revised assessment. The state share is included for completeness. No costs have been calculated for counties.

| Revenue Impact of SB 465 | | | | | | | |
|--|---------------|----------------|------------------|--------------------------|------------------|------------------|------------------|
| Estimated Rural Mills and Revenue TY 2008 | | | | Estimated Revenue | | | |
| | Mills | Percent | Revenue | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
| State | 101.52 | 21.4% | \$49,866 | \$99,733 | \$49,866 | \$49,866 | \$49,866 |
| County | 130.85 | 27.5% | \$64,273 | \$128,546 | \$64,273 | \$64,273 | \$64,273 |
| Local schools | 181.37 | 38.2% | \$89,088 | \$178,177 | \$89,088 | \$89,088 | \$89,088 |
| Countywide schools | 42.51 | 8.9% | \$20,881 | \$41,762 | \$20,881 | \$20,881 | \$20,881 |
| Misc & Fire districts | 18.80 | 4.0% | \$9,234 | \$18,469 | \$9,234 | \$9,234 | \$9,234 |
| Total | 475.05 | 100% | \$233,343 | \$466,686 | \$233,343 | \$233,343 | \$233,343 |

Technical Notes:**Department of Revenue**

- The following issues have been identified and should be clarified or if appropriate, the bill should direct the DOR to address these issues in administrative rules:

New Section 1: Adjustment of taxes for formerly taxed property.

- The bill is unclear in the timing, methodology, venue and criteria for determining navigable streambed property. DOR believes that the determination of whether a river is deemed navigable is made by the

Department of Natural Resources or by court order. The department simply implements that determination.

3. The criteria for selecting productivity level within land use classification for the acreage to be deducted, is not defined in the bill.

New Section 2: No presumption from tax status of property.

4. DOR recommends an amendment clarifying that Section 2 would apply only to a dispute between the state and a private party, which would confirm the existing law as the department understands it. The bill as written could have an unintended consequence of affecting suits between private parties for easements and adverse possession.

New Section 3: Irrigation structures, utility structures, & bridges of formerly taxable land -- water rights.

5. Section 3 is intended to be codified in Title 77, not in Title 15, yet it addresses ownership of the irrigated structures, utility structures, and bridges. The bill provides that while the land was considered taxable, the irrigation structure, utility structure, or bridge remains the property of the owner of the "formerly taxable property" or of the "water right holders" for whose benefit the structure was built. If land was considered taxable prior to 2008, based on DOR's understanding of current law (and as adjudicated in a district court), that type of land has been exempt for decades.
6. If the intent of this bill is to address ownership for property tax purposes, the method of addressing ownership in this bill may prove unworkable.

New Section 17. Retroactive applicability.

7. Based on the land use information available for 2008, applying the provisions of this bill retroactively may not be administratively possible or advisable, taking into consideration this is a reappraisal year. Recently, the Legislature has avoided passing retroactive legislation on property tax matters, especially in reappraisal years.

Department of Natural Resources and Conservation

8. In PPL Montana, LLC v. State of Montana, Cause No. CDV-2004-846 (2008), Montana First Judicial District Court, Judge Honzel declared that the beds of navigable waters are school trust lands. Section 3 of SB 465 allows persons to make use of state trust lands. For this use, the department would charge rents or issue easements for full market value compensation to common public schools, consistent with its fiduciary obligation.
9. For structures placed in the beds of navigable rivers without the permission of the department or State Board of Land Commissioners, section three of SB 465 conflicts with Section 70-18-101, MCA, which provides that fixtures, placed without permission upon land belonging to another person, belong to the owner of the land.
10. Sections four and seven of SB 465, which declare that the "use of a ford or crossing on a navigable river or stream may not be considered a trespass" would allow historic fording of rivers for livestock, but would conflict with: Section 61-8-371, MCA, which prohibits motorized vehicles from driving onto the beds of navigable waters; as well as the authority of the State Board of Land Commissioners under Article X, Section 4 to control state lands.
11. Section 9 prohibits a state oil and gas lessee from removing certain structures within navigable waters.


Sponsor's Initials


Date


Budget Director's Initials


Date